IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

CRL.A.No. 1694 of 2004()

CC.825/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR
AGAINST THE ORDER IN CRLP.596/2004 Dated 29/09/2004

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APPELLANT: APPELLANT:

DEVASSY, S/O.ANTONY, KUTHOOR VEETTIL,
TIRUR DESOM KOLAZHI VILLAGE, THRISSUR.

BY ADV. SRI.K.J.MOHAMMED ANZAR
SRI.CHITHRA R.SHENOY

RESPONDENTS: RESPONDENTS:

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1. BIJOY, S/O.JACOB, CHEMMANNOOR VEETTIL,
TIRUR DESOM, KOLAZHI VILLAGE, THRISSUR.

2. THE STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A No. 1694 of 2004 (B)

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Dated this the 1st day of March, 2007

J U D G M E N T

The complainant preferred a complaint against the first respondent, the accused, under Section 138 of the Negotiable Instruments Act. The case was posted on 03/07/2004. Neither the complainant nor his counsel was present. Therefore, the Judicial Magistrate of the First Class Court-I, Thrissur, dismissed the complaint and acquitted the accused. Hence, this appeal on obtaining leave.

2. The proceedings of this Court show that notice was sent through Speed Post to the first respondent-accused. Endorsement of the office reveal that the same was received by the first respondent in the year 2004. However, inadvertently, another learned Single Judge has again ordered notice. As per the order dated 03/06/2005, this Court had recorded that the said notice was also served on the first respondent. Nevertheless, there is no representation from the first respondent-accused.

3. When the appeal came up for consideration there was no representation, therefore, I posted the matter for disposal to this date. Today also, there is no representation from the appellant or the counsel.

4. The learned Public Prosecutor, Mr.Thomas J.Ambookan, submits that the learned counsel for the appellant, Mr.K.J.Muhammed Anzar, has become a Senior Government Pleader. From the names of the Advocates written on the docket, one Chitra R.Shenoy is mentioned along with K.J.Muhammed Anzar. But she is also not available before this Court. I refrain from making any comments on the conduct of the advocates, who are showing no responsibility to the litigant who approached them with this appeal. But the Court has got a duty ensure that because of the inaction on the part of the advocate or advocates, the litigant public should not be put to any loss or sufferings. Therefore, I dispose of this matter on merit, relying on the materials on record.

5. In the appeal memorandum it is stated that although the appellant complainant was absent before the court below, an application was filed under Section 309 of the Code of Criminal Procedure to condone the absence of the complainant and

the same was numbered as M.P.No.5795/2004. Even after filing that petition, the learned Magistrate has dismissed the complaint recording that the complainant as well as the counsel were absent.

6. In view of the above facts situation, I am of the opinion that an opportunity be given to the complainant to raise his contentions before the court below. Therefore, I set aside the impugned order dated 03/07/2004 and restore C.C.No.825/2002 to the file of Judicial Magistrate of the First Class Court-I, Thrissur.

7. The complainant shall appear before the court below on 02/04/2007. As the first respondent-accused is not present before this Court, steps according to law be taken and his presence be procured.

8. The case being a very old matter, the learned Magistrate shall dispose of the case within four months from the date of appearance/production of the first respondent-accused before the court below.

The appeal is allowed accordingly.

(J.M.JAMES)
Judge

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